

Supreme Court, U.S.  
FILED

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No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

DAVID BOWMAN,

*Petitioner,*

v.

AMERICAN RIVER  
TRANSPORTATION COMPANY,

*Respondent.*

On Petition For A Writ Of Certiorari  
To The Supreme Court Of Illinois

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

The question presented by this case is:

1. Where Federal Courts of Appeals have unanimously held that the "election clause" of the Merchant Marine Act of 1920, 46 U.S.C. §688(a) ("the Jones Act") confers on the seaman-plaintiff the exclusive right to determine the form of trial, jury or non-jury, and the Fifth Circuit has specifically held that this construction applies in a state court proceeding, may a state court reject those decisions and apply state law to create a jury trial right in the Jones Act defendant?

The Illinois Supreme Court's decision refused to follow an unbroken line of federal precedent to answer the question in the affirmative. Because this case implicates the significant national issue of the uniform application of maritime law and because the Illinois Supreme Court's holding conflicts with decisions of at least three United States Courts of Appeals, plaintiff respectfully submits that *certiorari* should be granted. See, e.g., *Norfolk & Western Ry. Co. v. Liepelt*, 444 U.S. 490, 493, 100 S.Ct. 755, 757, 62 L.Ed.2d 689, 693 (1980) (granting *certiorari* to resolve conflict in courts' treatment of evidence of taxation in Federal Employers' Liability Act<sup>1</sup> cases); and see, e.g., *Dice v. Akron, Canton & Youngstown R. Co.*, 342 U.S. 359, 72 S.Ct. 312, 96 L.Ed. 398 (1952) (granting *certiorari* "because the decision of the Supreme Court of Ohio appeared to deviate from previous decisions of this Court that federal law governs cases arising under the Federal Employers' Liability Act." 342 U.S. at 361.)

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<sup>1</sup> 35 Stat. 65, as amended, 45 U.S.C. §§51-60, hereinafter FEILA.

**STATEMENT OF INVOLVED PARTIES**

Petitioner David Bowman is an individual. Respondent American River Transportation Company is a wholly-owned subsidiary of Archer Daniels Midland Company.

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## OPINIONS BELOW

The opinion of the Illinois Supreme Court is reported as *Bowman v. American River Transportation Co.*, 217 Ill.2d 75, 838 N.E.2d 949 (2005) (Pet. App. 1-27)

The order of the Illinois Appellate Court is unreported. (Pet. App. 28-46)

The order of the Circuit Court of St. Clair County, Illinois is unreported. (Pet. App. 47-48)

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## STATEMENT OF JURISDICTION

The judgment and order of the Supreme Court of Illinois were entered on October 20, 2005. No petition for rehearing or reconsideration was filed. The petition invokes this Court's jurisdiction under 28 U.S.C. §1257(a).

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**46 U.S.C. §688(a) Recovery for Injury to or Death of Seaman** (a) Application of railway employee statutes; jurisdiction. Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all

statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

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### STATEMENT OF THE CASE

Respondent American River Transportation Company ("ARTCO") employed petitioner David Bowman as a seaman on board its vessel, the *M/V Bill Pehler* on the Upper Mississippi River near St. Louis. (Pet. App. 55) On May 25, 2001, petitioner was working as a deckhand when a defective cable broke apart, struck his leg and broke his right tibia. (Pet. App. 2) Petitioner underwent surgery to insert a rod inside the broken bone and was off of work for about six months. (Pet. App. 2)

Petitioner filed suit in an Illinois state court against respondent for negligence under the Jones Act, 46 U.S.C. §688, and for breach of the warranty of seaworthiness and for maintenance and cure under the general maritime law. (Pet. App. 53-65) At trial, respondent stipulated to liability. (Pet. App. 1)

Petitioner moved to strike the Respondent's jury demand on the ground that Respondent had no right to a jury trial under the Jones Act. (Pet. App. 51-52) The motion invoked the Illinois Appellate Court's decision in *Allen v. Norman Brothers, Inc.*, 286 Ill.App.3d 1091, 1094-1095, 678 N.E.2d 317, 319 (1997), that had recognized the unanimity of federal court decisions holding that the defendant was not entitled to a jury trial under the Jones Act. (Pet. App. 51) The trial court, Circuit Judge Lloyd

Cueto, granted the motion to strike the jury demand and transferred the case to the court's non-jury docket. (Pet. App. 49)

After defendant stipulated to liability, the case proceeded to trial before Associate Circuit Judge Walter Brandon. After accepting the parties' stipulations and hearing evidence, the circuit court found in favor of petitioner and awarded him \$325,000.00 in damages "for pain and suffering and disability and disfigurement." (Pet. App. 47-48) In addition, the trial court ordered defendants to pay \$7,200.00 for unpaid maintenance and \$7,200.00 as attorneys' fees for defendants' failure to pay maintenance. (Pet. App. 48) Respondent filed a timely appeal to the Illinois Appellate Court from this judgment and the order striking the jury demand.

The respondent's right to a jury trial under the Jones Act was the primary issue on appeal. Respondent urged the appellate court to conclude that its prior holding incorrectly "held that the right to a trial by jury is governed solely by federal law." (Pet. App. 32) The Illinois Appellate Court, through Presiding Justice Melissa Chapman with Justices Clyde Kuehn and Terrence Hopkins concurring, rejected that invitation and unanimously affirmed the order striking the jury demand. The court vacated that portion of the trial court's judgment for attorney fees and modified the award of maintenance but in all other respects, the Appellate Court affirmed the judgment.

The Illinois Supreme Court exercised its power of discretionary review to grant respondent's petition for leave to appeal (Pet. App. 50) and, in a unanimous opinion by Justice Lloyd Karmeier, reversed the judgment on the